

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

30227

FILE: B-216746**DATE:** January 17, 1985**MATTER OF:** Jensen Corporation**DIGEST:**

1. Where protester's descriptive literature submitted with its bid in response to solicitation specifying a brand name or equal product shows that protester's "equal" product fails to conform to the salient characteristics listed in the solicitation, the bid was properly rejected as nonresponsive.
2. Contentions that a specification for brand name or equal product unduly restricted competition, that the brand name product would not meet the agency's needs and that the solicitation allowed insufficient time for bid preparation will not be considered since they involve alleged defects apparent from the face of the solicitation and the protest was not filed prior to bid opening as required by Bid Protest Procedures.

Jensen Corporation protests the rejection of its bid under invitation for bids (IFB) No. 263-84-B(83)-0172 issued by the National Institutes of Health (NIH) for laundry equipment. Jensen's bid was rejected because the equipment it offered did not conform to the salient characteristics listed in the brand name or equal solicitation. Jensen contends that the equipment it offered is equal to or exceeds the requirements of the solicitation and argues that the solicitation unduly restricted competition. Finally, Jensen maintains that the solicitation did not allow sufficient time to prepare bids. For the reasons that follow, we deny the protest in part and dismiss it in part.

The IFB solicited bids, in the aggregate for an American Hypro II, 4-Roll, Flatwork Ironer with canopy manufactured by American Laundry Machine, "or equal," and the Model ELX Folder/Cross folder manufactured by Central

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Finishing Systems, "or equal." The solicitation contained the standard brand name or equal clause stating that any bids offering "equal" products would be considered for award if they fully met the salient characteristics listed in IFB. Jensen submitted a bid offering its Superstar, 2-roll No. 399 Steam Ironer and its Constellation, No. 466, Combination Folder/Crossfolder. The protester included technical specifications describing the machines with its bid. After reviewing this information, NIH concluded that Jensen's bid was nonresponsive for failing to meet three of the listed salient characteristics. According to NIH, Jensen's literature did not specify that the chests of the ironer met ASME requirements or indicate that the chests were free floating as required by the solicitation. Further, in NIH's view, Jensen's literature failed to specify that the machine had the required canopy covering all rolls, chests and gap pieces.

The major area of noncompliance concerned the free floating chests or rolls. The solicitation provided, under "Salient Characteristics for Item 1," that "Rolls shall be free floating type with the weight of the rolls designed to give 3/4 psi roll pressure without the use of pressure springs, roll bearings or any other type of pressure device." Under the heading "Ironing Pressures," the literature submitted with Jensen's bid stated that "The chests are raised and lowered by means of 4" (100 mm.) diameter double-acting, heavy duty hydraulic cylinders . . . a pressure regulating valve with a gauge is fitted in the right-hand feed frame to give indirect pressure control for each chest." Jensen does not dispute NIH's conclusion that Jensen's machine did not have the required free floating rolls. It instead maintains that such a characteristic is available only from American Laundry Machine, and is therefore restrictive.

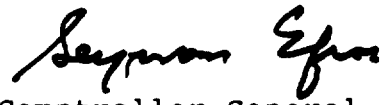
When a brand name or equal purchase description is used, it is incumbent upon the bidder who offers an "equal" product to establish that its product will meet the salient characteristics of the brand name product. Where, as here, however, it is clear from the literature submitted with the bid that the offered item does not conform to the salient characteristics of the brand name product, the bid must be

rejected as nonresponsive. The E.A. Kinsey Company, B-211832, July 11, 1983, 83-2 C.P.D. ¶ 75. Since the literature submitted with Jensen's bid clearly shows that the ironer it proposed did not conform to the salient characteristics listed in the solicitation, its bid was properly rejected as nonresponsive.

Jensen's contentions that the solicitation requirement for free floating rolls restricted competition, that the brand name machine specified would not meet NIH's needs and that the solicitation did not allow sufficient time for preparation of bids are untimely as these grounds of protest were evident from the face of the solicitation. Under our Bid Protest Procedures, protests based on alleged improprieties in a solicitation must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984); Jarrett S. Blankenship Co., B-213473, June 25, 1984, 84-1 C.P.D. ¶ 662. Since Jensen's protest was not filed until after bid opening, these issues are untimely and will not be considered.

Finally, Jensen complains that the solicitation was issued on August 27, 1984, prior to its announcement in the September 5 Commerce Business Daily (CBD). This argument is also untimely as the protest was not filed until October 10, more than a month after the CBD notice was published and after Jensen's bid had been rejected.

The protest is denied in part and dismissed in part.

for the 
Comptroller General
of the United States